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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,326	08/27/2003	Rudolf Dietl	003254-7	5356
22204	7590	05/13/2004		
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128				
EXAMINER GUTMAN, HILARY L				
ART UNIT		PAPER NUMBER		
3612				

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/648,326

Applicant(s)

DIETL, RUDOLF

Examiner

Hilary Gutman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/27/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 8/27/03 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Specification***

3. The disclosure is objected to because of the following informalities: at [0012], line 5, a space should be inserted after "appearance". Appropriate correction is required.

### ***Claim Objections***

4. Claim 11 is objected to because of the following informalities: on line 1, "a motor vehicle" (second occurrence) should be "the motor vehicle". Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 6-13, and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ferguson.

Ferguson (4,252,365) discloses a convertible top for attachment to a roof part 16 of a motor vehicle, comprising: a fabric material 36, at least one mounting element 34 attached to the fabric material, the at least one mounting element 32 being constructed for detachable connected to at least one corresponding mounting element of the roof part in an installed state of the convertible top.

For claim 11, Ferguson discloses roof module of a motor vehicle with a convertible top of a motor vehicle, comprising: a fabric material 36, a roof part 16 (Figure 1), at least one mounting element 34 attached to the fabric material, the at least one mounting element 34 being detachably connected to at least one corresponding mounting element 32 of the roof part.

With regard to claims 2 and 12, the convertible top is a folding convertible top.

With regard to claims 3 and 13, the mounting element 32 which is attached to the material of the convertible top is a flat element (Figure 4).

With regard to claims 6 and 16, the roof part has at least one recess 32 for passage and accommodation of the mounting element.

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With regard to claims 7 and 17, the corresponding mounting element of the roof part has a catch element 46 for detachable connection to the mounting element.

With regard to claims 8 and 18, the fabric material 36 cover a projection 50 of the roof part when attached to the roof part.

With regard to claims 9-10 and 19-20, the mounting element is attached to the fabric material of the convertible top.

With regard to claims 9, 10, 19, and 20, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113). Specifically, with regards to claims 9 and 19, the mounting element is recited to be "sewn" to the fabric material and with regard to claims 10 and 20, the mounting element is recited to be "cemented or thermally bonded" to the fabric material. These specific process limitations will not be taken into consideration when examining the merits of the claims. These recitations will be interpreted such that the mounting element is attached to the fabric material.

7. Claims 1-6, 9-16, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ferguson.

Ferguson (4,252,365) discloses a convertible top for attachment to a roof part 16a of a motor vehicle, comprising: a fabric material 52, at least one mounting element 56 (Figures 5-6) attached to the fabric material, the at least one mounting element being constructed for

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detachable connected to at least one corresponding mounting element 32, 42 of the roof part in an installed state of the convertible top.

For claim 11, Ferguson discloses roof module of a motor vehicle with a convertible top of a motor vehicle, comprising: a fabric material 52, a roof part 16a (Figure 5), at least one mounting element 56 attached to the fabric material, the at least one mounting element being detachably connected to at least one corresponding mounting element 32, 42 of the roof part.

With regard to claims 2 and 12, the convertible top is a folding convertible top.

With regard to claims 3 and 13, the mounting element which is attached to the material of the convertible top is a substantially flat element.

With regard to claims 4 and 14, the flat element is comb-shaped (as seen in Figure 6).

With regard to claims 5 and 15, the mounting element has clips (generally 62) with openings (thereunder) in which the corresponding mounting element 42 of the roof part is engageable.

With regard to claims 6 and 16, the roof part has at least one recess 32 for passage and accommodation of the mounting element.

With regard to claims 9-10 and 19-20, the mounting element is attached to the fabric material of the convertible top.

With regard to claims 9, 10, 19, and 20, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

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*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10. **Any response to this action should be mailed to:**

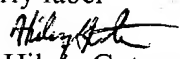
Assistant Commissioner for Patents  
Washington, D.C. 20231

**or faxed to:**

(703) 872-9326, (for formal communications intended for entry)

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label  
"PROPOSED" or "DRAFT").

  
Hilary Gutman

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5/10/07